

MEETING OF SEPTEMBER 14 AND 15, 1995
Carson City, Nevada

ITEM: VII. A.

SUBJECT: Statement of Policy Regarding the Implementation
Date of SB 121

DISCUSSION: The 1995 session of the Nevada Legislature adopted SB 121, to be effective on July 1, 1995. The legislation requires changes in the procedures for the review of reimbursement claims against the Petroleum Fund. The most significant change involves the replacement of the \$10,000 per tank deductible with a 10-percent co-payment. The legislation discusses maximum co-payments to be paid by certain tank owners, and it also discusses the necessity of heating oil tank cleanups to be fund-eligible.

All requests for coverage and reimbursement (non-heating oil) were deferred from the August 23, 1995 meeting of the State Board to Review Claims in order to properly assess the appropriate implementation date of the legislation. Specifically, a determination is to be made on: (1) applying the co-payment on all reimbursement requests reviewed by the Board on or after July 1, 1995, regardless of a previously established deductible level; or (2) applying the co-payment and other legislative requirements on applications received and established by the Nevada Division of Environmental Protection on or after July 1, 1995.

RECOMMENDATION: Adoption of Resolution No. 95-028, Option A, as proposed.

STATE BOARD TO REVIEW CLAIMS
RESOLUTION NO. 95-028

Resolution to Adopt a Statement of Policy Regarding
the Implementation Date of SB 121

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. SB 121, Attachment "A" of this Resolution, was adopted by the 1995 session of the Nevada Legislature. The final section of the bill states, "Sec. 5. This act becomes effective on July 1, 1995."
2. SB 121 requires a revised approach in how requests for corrective action are to be reviewed and reimbursed. The significant revisions with respect to claim reviews include:
 - a. The cleanup associated with unregulated heating oil tanks less than 1,100-gallons in size must be necessary to protect the environment or the public health and safety. The \$250 per tank deductible for corrective action expenses and for damages to a person other than the state or the operator of the tank remains unchanged.
 - b. For all other tanks, the \$10,000 per tank deductible has been replaced with a 10-percent co-payment for corrective action costs and for damages to a person other than the state or the operator of the tank.
 - c. For political subdivisions of the State, the co-payment is capped at \$10,000 per tank for corrective action expenses, and \$10,000 per tank for damages to a person other than the state or the operator of the tank.
 - d. For small businesses [NRS 590.880(6)], the co-payment is capped at \$50,000 for cleaning up and \$50,000 for damages to a person other than the state or the operator of the tank, regardless of the number of storage tanks involved.
3. Applications for fund eligibility submitted prior to July 1, 1995 have been reviewed for fund eligibility. Deductibles for those cases were assigned based upon the laws that were in place at that time. The Receipt of Application for Coverage letter and enclosure sent to the

responsible party by NDEP prior to July 1, 1995 stated the deductible and coverage amounts applicable to the reimbursement request claim submitted. An application is a request for fund coverage for a discovered petroleum tank discharge on a form prescribed by the division.

4. Article 1, Section 15 of the Nevada State Constitution (and subsequent case hearings) discuss the manner in which compliance to certain statutes and regulations are maintained for certain types of written and implied contracts when the statutes and regulations are revised in the middle of the contract.

OPTION A

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims shall apply the revised statutes for the review of corrective action costs from leaking petroleum tanks, as contained in SB 121, to all cases whose applications for fund eligibility were received by the Nevada Division of Environmental Protection (NDEP) on or after July 1, 1995. All requests for reimbursement that relate to applications received by NDEP prior to July 1, 1995, shall be reviewed in accordance with the statutes and regulations that were in place at the time the applications were received.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 15, 1995.

John Haycock, Chairman
State Board to Review Claims

OPTION B

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims shall apply the revised statutes for the review of corrective action costs from leaking petroleum tanks, as contained in SB 121, to all claims reviewed by the Board after July 1, 1995. Each claimant shall be responsible for the total co-payment amount with each claim that is reviewed by the Board after July 1, 1995, to the amounts described in Finding No. 2. Deductibles previously paid by the claimants will be used to satisfy the overall co-payment amount.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 15, 1995.

John Haycock, Chairman
State Board to Review Claims

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims shall apply the revised statutes for the review of corrective action costs from leaking petroleum tanks, as contained in SB 121, to all cases whose first action by the Board occurs after July 1, 1995. All requests for reimbursement that relate to applications received by NDEP prior to July 1, 1995, and received a Board action prior to July 1, 1995, shall be reviewed in accordance with the statutes and regulations that were in place at the time the applications were received.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 15, 1995.

John Haycock, Chairman
State Board to Review Claims